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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IVORY GHEE,)
)
Plaintiff,)
)
v.) No. 05 C 2275
)
LUSTER PRODUCTS, et al.,)
)
Defendants.)

MEMORANDUM ORDER

Counsel for the three defendants in this employment discrimination action brought against them by Ivory Ghee ("Ghee") have filed a motion for reconsideration of the portion of this Court's brief June 8, 2005 memorandum order ("Order") that struck defendants' Second Affirmative Defense ("AD 2"). That motion is denied for the reason briefly stated here, although defendants are in no way prejudiced by that denial--their Answer's denials of Ghee's allegations are sufficient to place in issue Ghee's claim for punitive damages.

This Court is of course well aware of the teaching of Kolstad v. Am. Dental Ass'n, 527 U.S. 526 (1999) on the availability (and unavailability) of punitive damages in Title VII cases. Where this Court and defense counsel part company is that defense counsel has not given heed to two basic principles of federal pleading:

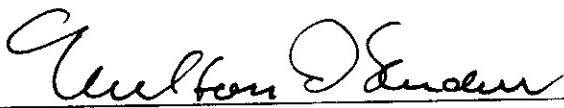
1. For purposes of evaluating ADs, just as with motions under Fed. R. Civ. P. 12(b)(6), all of a plaintiff's

allegations are treated as true--and that extends to the drawing of all reasonable inferences from those allegations in plaintiff's favor.

2. Where as here a plaintiff has acted pro se, the complaint is read through a particularly generous lens (Haines v. Kerner, 404 U.S. 519, 520-21 (1972) (per curiam)).

In this instance, Ghee's allegations in Complaint ¶¶13 and 14, which include defendants' asserted harassment of and retaliation against Ghee after he complained of discrimination, sufficiently create a reasonable inference as to the existence of malice or reckless indifference demanded by Kolstad and like cases as the predicate for a punitive damages award.

Because defendants' now-tendered First Amended Answer and Affirmative Defenses has in part cured other flaws identified in the Order, leave is granted to file that amendatory responsive pleading. But as before, AD 2 is stricken for the reasons stated here.



Milton I. Shadur
Senior United States District Judge

Date: June 21, 2005